

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ROBERT SCHUG,

Petitioner,

v.

Case No. 06-C-814

ANNE RENARD,

Respondent.

DECISION AND ORDER

Petitioner Robert Schug filed the present petition for a writ of habeas corpus seeking federal habeas relief from what he claims to have been the wrongful revocation of his probation. On July 28, 2006, the United States District Court of the Western District of Wisconsin transferred this federal habeas action to the Eastern District of Wisconsin.

Shortly after petitioner filed his petition, he also filed a separate motion for preliminary injunctive relief requesting his immediate release based on the conditions of his confinement at Fox Lake Correctional Institute. However, on January 29, 2007, petitioner filed a motion to amend the parties as he had been released to the supervision of his probation officer. Petitioner's release on probation renders his motion for preliminary injunctive relief moot. Chapman v. Kleindienst, 507 F.2d 1246, 1249 (7th Cir. 1974) (affirming district court's conclusion that petitioner's release from prison rendered his injunctive request for release moot). However, I note this does not necessarily affect his underlying habeas petition. Cochran v. Buss, 381 F.3d 637, 640 -41 (7th Cir. 2004) (noting that "[a] petition for habeas corpus filed while a person is in custody does not become moot at the end of custody if the person suffers sufficient collateral consequences from the sentence.") Thus, I will deny petitioner's motion for preliminary injunctive relief without prejudice.

Also pending before me are respondent's motion to dismiss petitioner's habeas petition and petitioner's motion for default judgment dated October 18, 2006. On August 28, 2006, Magistrate Judge William Callahan, to whom this case previously was assigned, ordered respondent to respond to petitioner's habeas petition by October 2, 2006. A review of the docket reveals that respondent filed its answer to petitioner's petition and a motion dismiss on October 2, 2006. Thus, I will deny petitioner's motion for default judgment as respondent's answer was timely.

However, petitioner has not responded to respondent's motion, and filed his motion for default judgment over two weeks after respondent filed her motion and answer. As such, I am concerned that he has not received them. Further, the parties have not addressed the effect, if any, of petitioner's release on his pending petition. Thus, I will dismiss respondent's current motion to dismiss without prejudice with leave to refile. I respectfully request that the parties address the issue of mootness upon refiling.

Therefore, for the foregoing reasons,

IT IS ORDERED that petitioner's request for preliminary injunctive relief is **DENIED AS MOOT**.

FURTHER, IT IS ORDERED that petitioner's motion for default judgment is **DENIED**.

FINALLY, IT IS ORDERED that respondent's motion to dismiss is **DENIED WITH LEAVE TO REFILE**. The briefing schedule will be as follows: (1) petitioner shall have 45 days following the receipt of respondent's dispositive motion and supporting initial brief within which to file a brief in opposition; and (2) respondent shall have 30 days following the filing of petitioner's opposition brief within which to file a reply brief, if any.

Dated at Milwaukee, Wisconsin, this 30 day of March, 2007.

/s _____
LYNN ADELMAN
District Judge